

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

RICKY LEON DORITY	§	
VS.	§	CIVIL ACTION NO. 5:09cv57
WARDEN KEITH ROY	§	

MEMORANDUM OPINION AND ORDER

Petitioner Ricky Leon Dority, an inmate confined at the Federal Correctional Institution in Texarkana, Texas, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Discussion

A final judgment was entered on March 8, 2010, dismissing the above-styled action. Petitioner appealed the dismissal to the Fifth Circuit Court of Appeals. On December 28, 2010, the Fifth Circuit affirmed the judgment of the District Court. Petitioner's petition for writ of certiorari to the Supreme Court was denied on July 1, 2011. Petitioner subsequently filed this motion for reconsideration of the judgment.

Analysis

Rule 60, FED. R. CIV. P., provides in relevant part:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud ..., misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion. (1) Timing. A motion under Rule 60(b) must be made within a reasonable time -- and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

FED. R. CIV. P. 60(b) and (c).

Petitioner's motion for relief from the judgment was not filed until more than seventeen (17) months after the judgment was entered. Further, petitioner's motion was not filed until after his petition for writ of certiorari had been denied by the Supreme Court. As this petitioner has already challenged the dismissal of this action to the Supreme Court, this court is not at liberty to entertain petitioner's motion for relief from judgment.

ORDER

For the reasons set forth above, petitioner's motion for reconsideration should be denied. It is therefore,

ORDERED that petitioner's motion for relief from judgment is **DENIED**.

SIGNED this 13th day of January, 2012.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE